

§ 51. Short title

Sections 51 to 58 of this title may be cited as the “Anti-Kickback Act of 1986”.

(Mar. 8, 1946, ch. 80, §1, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3523.)

AMENDMENTS

1986—Pub. L. 99-634 amended section generally, substituting short title provision for provisions relating to fees or kick-backs by subcontractors on negotiated contracts, recovery thereof by the United States, conclusive presumption that such payments by such subcontractors were included in the price of the subcontract or order and ultimately borne by the United States, and withholding by the prime contractor of such amounts from sums otherwise due a subcontractor.

1960—Pub. L. 86-695 inserted “negotiated” before “contract” and struck out “, on a cost-plus-a-fixed-fee or other cost reimbursable basis” after “whatsoever” in cl. (1), and substituted “setoff” for “set-off” and “contract” for “cost-plus-a-fixed-fee or cost reimbursable contract,” before “or by an action”.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3 of Pub. L. 99-634 provided that:

“(a) Except as provided in subsection (b), the Anti-Kickback Act of 1986 (as set out in section 2(a)) [sections 51 to 58 of this title] shall take effect with respect to conduct described in section 3 of such Act [section 53 of this title] which occurs on or after the date of the enactment of this Act [Nov. 7, 1986].

“(b) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (as set out in section 2(a)) [section 57(a) and (b) of this title] shall take effect with respect to contract solicitations issued by an agency, department, or other establishment of the Federal Government on or after the date which is 90 days after the date of the enactment of this Act [Nov. 7, 1986].”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-634 provided: “That this Act [enacting sections 55 to 58 of this title, amending this section and sections 52 to 54 of this title, and enacting provisions set out as a note above] may be cited as the ‘Anti-Kickback Enforcement Act of 1986’.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

§ 52. Definitions

As used in sections 51 to 58 of this title:

(1) The term “contracting agency”, when used with respect to a prime contractor, means any department, agency, or establishment of the United States which enters into a prime contract with a prime contractor.

(2) The term “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(3) The term “person” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) The term “prime contract” means a contract or contractual action entered into by the United States for the purpose of obtaining sup-

plies, materials, equipment, or services of any kind.

(5) The term “prime contractor” means a person who has entered into a prime contract with the United States.

(6) The term “prime contractor employee” means any officer, partner, employee, or agent of a prime contractor.

(7) The term “subcontract” means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(8) The term “subcontractor”—

(A) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

(B) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) The term “subcontractor employee” means any officer, partner, employee, or agent of a subcontractor.

(Mar. 8, 1946, ch. 80, §2, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3523.)

AMENDMENTS

1986—Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: “For the purpose of sections 51 to 54 of this title, the term ‘subcontractor’ is defined as any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or to furnish any article or service required for the performance of a negotiated contract or of a subcontract entered into thereunder; the term ‘person’ shall include any subcontractor, corporation, association, trust, joint-stock company, partnership, or individual; and the term ‘negotiated contract’ means made without formal advertising.”

1960—Pub. L. 86-695 substituted “negotiated contract” for “cost-plus-a-fixed-fee or cost reimbursable contract” in definition of “subcontractor” and defined “negotiated contract”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-634 effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as a note under section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 51 of this title.

§ 53. Prohibited conduct

It is prohibited for any person—

(1) to provide, attempt to provide, or offer to provide any kickback;

(2) to solicit, accept, or attempt to accept any kickback; or

(3) to include, directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price

charged by a prime contractor to the United States.

(Mar. 8, 1946, ch. 80, § 3, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 741; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

AMENDMENTS

1986—Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: “For the purpose of ascertaining whether such fees, commissions, compensation, gifts, or gratuities have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a negotiated contract.”

1960—Pub. L. 86-695 substituted “negotiated contract” for “cost-plus-a-fixed-fee or cost reimbursable contract”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-634 effective with respect to conduct described in this section which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as a note under section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52, 54, 55, 56, 57, 58 of this title.

§ 54. Criminal penalties

Any person who knowingly and willfully engages in conduct prohibited by section 53 of this title shall be imprisoned for not more than 10 years or shall be subject to a fine in accordance with title 18, or both.

(Mar. 8, 1946, ch. 80, § 4, 60 Stat. 38; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 741; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

AMENDMENTS

1986—Pub. L. 99-634 amended section generally. Prior to amendment, section read as follows: “Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment shall be fined not more than \$10,000 or be imprisoned for not more than two years, or both.”

1960—Pub. L. 86-695 reenacted section without change.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-634 effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as a note under section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52 of this title.

§ 55. Civil actions

(a)(1) The United States may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct prohibited by section 53 of this title. The amount of such civil penalty shall be—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than \$10,000 for each occurrence of prohibited conduct.

(2) The United States may, in a civil action, recover a civil penalty from any person whose employee, subcontractor or subcontractor em-

ployee violates section 53 of this title by providing, accepting, or charging a kickback. The amount of such civil penalty shall be the amount of that kickback.

(b) A civil action under this section shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, and (2) the date on which the United States first knew or should reasonably have known that the prohibited conduct had occurred.

(Mar. 8, 1946, ch. 80, § 5, as added Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

EFFECTIVE DATE

Section effective with respect to conduct described in section 53 of this title which occurs on or after Nov. 7, 1986, see section 3(a) of Pub. L. 99-634, set out as an Effective Date of 1986 Amendment note under section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52 of this title.

§ 56. Administrative offsets

(a) Offset authority

A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 53 of this title against any moneys owed by the United States to the prime contractor under the prime contract to which such kickback relates.

(b) Duties of prime contractor

(1) Upon direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against that prime contractor under subsection (a) of this section.

(2) Such contracting officer may order that sums withheld under paragraph (1)—

(A) be paid over to the contracting agency; or

(B) if the United States has already offset the amount of such sums against that prime contractor, be retained by the prime contractor.

(3) The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (2)(B).

(c) Claim of Government

An offset under subsection (a) of this section or a direction or order of a contracting officer under subsection (b) of this section is a claim by the Government for the purposes of the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.].

(d) “Contracting officer” defined

As used in this section, the term “contracting officer” has the meaning given that term for the purposes of the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.].

(Mar. 8, 1946, ch. 80, § 6, as added Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subs. (c) and (d), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat.